

DOCKET NO. 2001.11.005.BN0  
U.S. SERIAL NO. 09/993,333  
PATENT

## REMARKS

Claims 1-20 were originally filed in the present application.

Claims 1-20 are pending in the present application.

Claims 1, 8 and 15 were rejected in the August 15, 2005 Office Action.

Claims 2-7, 9-14 and 16-20 were objected to in the August 15, 2005 Office Action.

No claims have been allowed.

Reconsideration of the claims is respectfully requested.

In Section 1 of the August 14, 2005 Office Action, the Examiner indicated that Applicants' arguments filed July 5, 2005 were not persuasive. Additionally, in Sections 2 and 3 of the August 14, 2005 Office Action, the Examiner rejected Claims 1, 8 and 15 under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent No. 6,748,432 to *Lee* (the "Lee reference"). Specifically, the Examiner argues *inter alia* that the Lee reference discloses a "use state" which "provides an indication of the 'likelihood' of existing traffic blocking a desired data transfer since the arrangement of candidate paths would be from most suitable or optimum (i.e. low probability of blocking) to less suitable (i.e. high probability of blocking)." (August 14, 2005 Office Action, Section 1, lines 8-11). Applicants respectfully disagree.

Applicants assert that the Lee reference discloses a "use state" for all links positioned between consecutive stages in a CLOS switching network. (Lee reference, column 5, lines 15-18 and Abstract). Each link of the input and output stages is classified into one of three states. (Lee reference, column 5, lines 45-47). State One indicates that the link is not being used (or idle), while

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State Two indicates that the link is being used for the connection of a signal of a clear DS3 mode or an unframed DS3 mode (i.e., the connection of a VC3 level signal). (Lee reference, column 5, lines 47-51). State Three indicates that the link is being used for the connection of a hybrid DS3 level signal (i.e., a connection of the VC11 level signal or to the VC12 level signal). (Lee reference, column 5, lines 51-54). Thus, Applicants assert that the Lee reference discloses a state management system to manage simply whether a channel is in use (or idle) and/or to identify the type of signal level connected to each channel.

Applicants also assert that the Lee reference fails to solve the problem of blocking. In fact, the Lee reference *teaches away* from overcoming certain blocking related issues and even emphasizes that “[b]locking may be an unavoidable problem... [and] if such a problem occurs, it is typically solved by resetting the path”. (Lee reference, column 8, lines 44-51). Applicants thus assert that the Lee reference fails to disclose *assessing and comparing the amount of existing traffic on one path with that on another path* (i.e., selecting the path having the least likelihood of being blocked by existing traffic) before assigning a signal to a channel. Accordingly, the Lee reference fails to disclose a controller, wherein the controller *selects one of the plurality of paths having a least likelihood of being blocked by the existing traffic* for the desired data transfer, as required by Applicants’ Claims 1 and 8. Similarly, the Lee reference fails to disclose a method comprising *selecting one of the plurality of paths having a least likelihood of being blocked by the existing traffic* for the desired data transfer, as required by Claim 15.

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Claims 1, 8 and 15 are thus allowable. Moreover, defendants of Claims 1, 8 and 15, Claims 2-7, 9-14 and 16-20, respectively, are also allowable. In light of the above, Applicants request the Examiner to reconsider the Lee reference, withdraw the rejection to Claims 1-20 and allow Claims 1-20 to issue.

In Sections 4 and 5 of the August 15, 2005 Office Action, the Examiner indicated that Claims 2-7, 9-14 and 16-20 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants thank the Examiner for this indication and respectfully request the Examiner to reconsider the allowability of Claims 2-7, 9-14 and 16-20 which depend from allowable Claims 1, 8 and 15, respectively.

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### SUMMARY

For the reasons given above, the Applicants respectfully request reconsideration and allowance of pending claims and that this Application be passed to issue. If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this Application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at [jmockler@davismunck.com](mailto:jmockler@davismunck.com).

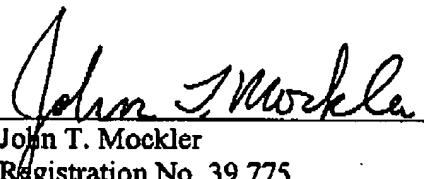
The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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